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In the Supreme Court of the United States.

OCTOBER TERM, 1944.

**BETTER BUSINESS BUREAU OF WASHINGTON, D. C.,
INC., PETITIONER**

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA**

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinions of the District Court (R. 47) and of the Court of Appeals (R. 52-55) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 19, 1945 (R. 56), and the petition for a writ of certiorari was filed on March 29, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner was exempt from social security taxes as a corporation organized and operated exclusively for educational or scientific purposes within the meaning of Section 811 (b) of the Social Security Act and Section 1426 (b) (8) of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory and regulatory provisions are set forth in the Appendix, *infra*, pp. 7-10.

STATEMENT

The opinion of the District Court contains no findings of fact. The facts were stipulated (R. 12), and may be summarized as follows:

The petitioner was organized under the laws of the District of Columbia (R. 12). Its charter states (R. 12-13):

* * * the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in

its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purposes of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

The petitioner was not organized for profit, had no shares of stock, and no part of its earnings inured to the benefit of any private shareholder or individual (R. 13). Its work was financed by voluntary subscriptions or membership fees received in varying amounts from interested business people (R. 13-14). The petitioner's officers were elected annually from its membership, had only nominal duties, and were paid no salary. Only the managing director and a number of employees were paid. (R. 14.)

Upon inquiry, the petitioner furnished available information to members and non-members alike (R. 13). To combat fraud, it gave warnings of swindlers and their schemes, and sought to frustrate them (R. 14-15). The petitioner sought to raise business standards by convincing merchants that "the doctrine of caveat emptor is not good

business," and by fostering a "constructive, voluntary, plan of honest advertising . . . in the interest of public confidence" (R. 15). By means of speeches, bulletins, and newspaper and radio matter, the petitioner sought to protect the consumer's "interest in our economic scheme" (R. 15-16). It cooperated with various local and federal law-enforcement agencies (R. 16). Finally, it engaged in a variety of other activities, such as informing merchants of new legislation applicable to business and assisting in putting it into effect (R. 27).

After paying the taxes involved for the calendar years 1937 to 1941, inclusive, the petitioner filed claims for refunds, which were disallowed (R. 40, 42). It then instituted action for recovery of the taxes in the District Court (R. 2), which granted a motion for summary judgment for the United States (R. 47). The judgment of the District Court was affirmed on appeal to the Court of Appeals for the District of Columbia (R. 56).

ARGUMENT

1. It is at least doubtful whether the decision below conflicts with the decision of the United States Circuit Court of Appeals for the Tenth Circuit in *Jones v. Better Business Bureau of Oklahoma City*, 123 F. 2d 767. That case involved a different corporation organized for pur-

poses related less directly to the business advantage of its members than the purposes of the petitioner (123 F. 2d at p. 768; R. 12-13).

We believe that the purposes for which the respective corporations were organized were sufficiently different to prevent a direct conflict in decisions, since under the statutes (Section 811 (b) of the Social Security Act and Section 1426 (b) (8) of the Internal Revenue Code, Appendix, *infra*, pp. 7-9) exemption may be had only if the claimant was organized, as well as operated, exclusively for one or more of the stated purposes. Moreover, it cannot be assumed that the different corporations were operated for the same purposes. The evidence in each case was of course not the same, and the District Courts drew different conclusions from the different evidence. That the appellate courts announced conflicting or at least divergent views of the law in affirming the decisions of the District Courts on this exemption provision does not, in our opinion, present a situation calling for intervention by this Court.

2. This case arose on its own special facts, and was decided in accordance with correct principles of law. It does not present any question of general importance.

CONCLUSION

The decision below is correct and presents no question of general importance. There is no

clear conflict in decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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APRIL 1945.

APPENDIX

Social Security Act, c. 531, 49 Stat. 620:

SEC. 811. When used in this title—

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (42 U. S. C. ed., Sec. 1011.)

Internal Revenue Code:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

(b) *Employment.*—The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or ani-

mals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; * * *. (26 U. S. C., Sec. 1426.)

Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360:

SEC. 606. Effective January 1, 1940, section 1426 of the Internal Revenue Code is amended to read as follows:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

* * *

(b) *Employment*.—The term “employment” means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

* * *

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; * * * (26 U. S. C., Sec. 1426.)

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act:

ART. 12. *Religious, charitable, scientific, literary, and educational organizations and community chests.*—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

An educational organization within the meaning of section 811 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed

of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811 (b) (8) of the Act.

The provisions of Section 402.215, Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (Sections 1400-1431 of the Internal Revenue Code) are substantially the same as those of Article 12, Treasury Regulations 91.